

July 15, 2019

Calhoun Port Authority
P.O. Box 397
Point Comfort, Texas 77978
Attention: Charles Hausmann, Port Director

Re: Notice of Abandonment of 20-inch Natural Gas Pipeline

Dear Mr. Hausmann:

This letter is sent in connection with that certain Submerged Easement Agreement, effective July 1, 2010 (as amended, the "Agreement"), between Calhoun Port Authority, a governmental agency and body politic operating and existing as a conservation and reclamation district created pursuant to Article 16, Section 59 of the Constitution of the State of Texas (the "Port" or "you"), and Matagorda Offshore, LLC (successor to Enterprise GC, L.P.), a Texas limited liability company ("Matagorda," "we" or "us"). Capitalized terms used and not defined herein shall have the same meaning as given in the Agreement.

Pursuant to the Agreement, we send this letter as written notice to you of our decision to permanently abandon the Pipeline. The Pipeline was decommissioned in accordance with the Bureau of Safety and Environmental Enforcement requirements per 30 CFR 250.1750-1753, which included:

- Flushing entire pipeline by pigging and filling with seawater;
- Disconnection from junction platform in Matagorda Bay Area, State Block-135;
- Plugging each cut end of the pipeline; and
- Confirmed depth of cover at pipeline ends and covering endpoints with sand bags.

In connection with our decision to permanently abandon the Pipeline, we ask that you agree to (1) the termination of the Agreement, effective as of July 1, 2019, and (2) the Pipeline being abandoned in place, as contemplated in paragraph 3 of Article X of the Agreement. In addition, we ask that you cancel your invoice number 52154, dated July 1, 2019, as that invoice relates to the 2019/2020 fiscal year and we are terminating the Agreement at the beginning of such fiscal year.

If you agree, please sign in the space indicated below to indicate your agreement and return an original of this letter with your signature on it to Jessica Stone at 919 Milam, Suite 2100, Houston, Texas 77002. If you have any questions or comments, please contact us at 832-280-3093 or at Jessica. Stone@genlp.com.

[Signatures on following page]



(361) 987-2813 • Fax (361) 987-2189 • 2313 FM 1593 South • P.O. Box 397 • Point Comfort, Texas 77978 www.calhounport.com

PORT OF PORT LAVACA - POINT COMFORT

Providing Calhoun County Industries with Direct Deep-Draft Access to Global Markets

MEMORANDUM

TO: Calhoun Port Authority Board Members

FROM: Charles R. Hausmann, Port Director

DATE: August 6, 2019

SUBJECT: Agenda Item No. 9, Review and Consideration of a Notice of Abandonment of a 20-inch Natural gas Pipeline by Matagorda Offshore, LLC.

Members of the Board, I have attached a copy of a letter that the Port received from Matagorda Offshore, LLC requesting the pipeline easement be terminated and the invoice we issued for this year be voided. The letter states that the pipeline was decommissioned in accordance with the Bureau of Safety and Environmental Enforcement requirements per 30 CFR 250.1750-1753 including flushing the entire pipeline, disconnection from junction platform in Matagorda Bay Area, State Bloc-135, plugging each cut end of the pipeline and confirmed depth of cover over pipeline ends and covering endpoints with sand bags. I have also attached a copy of the current easement with Matagorda Offshore, LLC for your review.

Please feel free to contact me if you have any questions concerning the proposed request for abandonment of a pipeline.

Cc: David Roberts, Port General Counsel Forrest E. Hawes, Deputy Port Director David M Knuckey, Director of Engineering Services Calhoun Port Authority Attention: Charles Hausmann, Port Director July 15, 2019 Page 2 of 2

Sincerely,

Matagorda Offshore, LLC

Name: Karen N. Pape

Title: Senior Vice President

Acknowledged and agreed to by Calhoun Part Authority as of July ___, 2019:

By: Name:

SUBMERGED EASEMENT AGREEMENT

This Submerged Easement Agreement (the "Agreement") between the Calhoun Port Authority, a governmental agency and body politic operating and existing as a conservation and reclamation district created pursuant to Article 16, Section 59 of the Constitution of the State of Texas (the "Port"), and Enterprise GC, L.P., a corporation having its principal place of business at 2727 N Loop West, Room 613, Houston, Texas 77008-1044 ("Enterprise"), effective as of the 1st day of July 2010.

WHEREAS, Enterprise has owned a pipeline across a portion of submerged real property owned by the Port under Lavaca Bay, such land being more fully described in Exhibit "A" ("Easement") which is attached hereto and incorporated herein for any and all purposes; and

WHEREAS, Enterprise is the predecessor in title to such pipeline from El Paso Offshore Gathering and Transmission Company; and

WHEREAS, Enterprise has been using such real property belonging to Port since the termination of the original lease on El Paso Offshore Gathering and Transmission Company; and

WHEREAS, Enterprise has being using Port's real property as a tenant at sufferance; and

WHEREAS, the Parties wish to formalize the tenancy at sufferance; and

WHEREAS, the Port intends to grant the Easement to Enterprise for a 20 inch, 4,144.42 rod natural gas pipeline ("Enterprise's Pipeline"); and

WHEREAS, the Port has determined that the granting of the Easement to Enterprise is authorized by law and constitutes a valid public use; and

WHEREAS, the Port shall grant the Easement to Enterprise pursuant to this Agreement under which Enterprise shall pay periodic payments as herein stipulated ("the Easement Payments"); and

WHEREAS, the parties desire to set forth the terms and conditions under which the Easement can be acquired by Enterprise from the Port;

NOW, THEREFORE, the parties hereto, in consideration of the premises and covenants herein set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, each intending to be legally bound, agree as follows:

. 1

ARTICLE I

Representations, Covenants and Warranties

- 1. The Port is a political subdivision of the State of Texas, governed by the Constitution and laws of the State of Texas.
- 2. The officers of the Port executing this Agreement have been duly authorized to execute and deliver this Agreement by valid formal action of the Port.
- 3. Enterprise is a corporation duly organized, existing and in good standing under the laws of the State of Delaware and is fully qualified to do business in the State of Texas; has full and complete power to enter into this Agreement, and carry out the transactions contemplated hereby and to carry out its obligations under this Agreement; and has duly authorized the execution and delivery of this Agreement.
- 4. Enterprise shall at all times during the term hereof maintain and preserve full corporate power and authority to perform, and shall perform its obligations hereunder in the manner and at the times set forth herein.
- 5. Enterprise will not willfully or knowingly use or maintain the Easement, or any part thereof, improperly, carelessly, in violation of any applicable federal, state or local law or in a manner contrary to that contemplated by this Agreement.
- 6. Enterprise will comply with all laws, regulations, rules and orders of any federal, state or local authority or agency concerning the maintenance of the Easement and the Enterprise's Pipeline within the Easement.
- 7. This Agreement has been duly authorized, executed and delivered by Enterprise, and constitutes the valid, legal and binding agreement of Enterprise, enforceable in accordance with its terms.

ARTICLE II

Easement

1. Agreement. Subject to compliance by Enterprise with the terms of this Agreement, the Port hereby grants to Enterprise for its exclusive use and Enterprise hereby accepts the Easement from the Port under the terms and conditions set forth in this Agreement, the property more fully described in Exhibit "A".

- 2. <u>Purpose of Easement</u>: This Agreement, with its rights and privileges shall be used solely for the purpose of locating, installing, maintaining, operating, repairing and removing one pipeline, within the Easement situated in the submerged property described in Exhibit "A."
- THE PORT MAKES NO WARRANTY OR Port's Disclaimers. REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OR THE FITNESS FOR ANY PARTICULAR PURPOSE OF THE EASEMENT, INCLUDING THE EASEMENT'S SUITABILITY FOR ENTERPRISE'S PIPELINE. THE PORT SHALL NOT BE RESPONSIBLE FOR LATENT DEFECTS, GRADUAL DETERIORATION OR LOSS OF SERVICE OR USE OF THE EASEMENT OR ANY PORTION THEREOF. THE PORT SHALL NOT BE LIABLE TO ENTERPRISE OR TO ANYONE ELSE FOR ANY LIABILITY, INJURY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE EASEMENT OR ANY PORTION THEREOF, ANY INTERRUPTION OF USE OR LOSS OF USE OF THE EASEMENT, ENTERPRISE'S PIPELINE OR ANY PORTION THEREOF OR ANY LOSS OF BUSINESS OR OTHER CONSEQUENCE OR DAMAGE, WHETHER OR NOT RESULTING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOREGOING. THE PORT SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES WITH RESPECT TO THE EASEMENT.
- 4. <u>Covenant of Quiet Enjoyment</u>. The Port covenants that Enterprise, on paying the Easement Payments and other payments required under this Agreement, and on observing and performing all the other terms and conditions in this Agreement to be performed or observed by Enterprise, shall, during the term of this Agreement, peaceably and quietly have, hold and enjoy the Easement, without disturbance from any person whatsoever, subject to the terms, covenants, conditions and provisions and agreements of and in this Agreement and subject to all rights of persons holding an interest in the real property underlying the Easement.
- 5. Rights of the Port. Nothing herein contained shall prevent the Port from granting to other persons, firms or corporations easements to cross this Easement so long as such other easements do not interfere with the rights granted to Enterprise and Enterprise's agents. The Port shall notify Enterprise at least thirty (30) days in advance of construction of any easement granted by the Port along or crossing this Easement.

ARTICLE III

Term of Agreement

This Agreement is for a term of ten (10) years effective as of July 1, 2010 and continuing until the 30th day of June, 2020.

ARTICLE IV

Use

- 1. <u>Permitted Use.</u> Enterprise shall use the Easement for the development and operation of any Permitted Uses under this Agreement.
- 2. <u>Continuous Operation</u>. Enterprise will occupy and continually use the Easement solely for any or all of the Permitted Uses and in strict compliance with all Legal Requirements. This Agreement shall terminate in the event Enterprise abandons the use of the Easement for a continuous period of one hundred eighty (180) days unless excused by Force Majeure.
- 3. Specifically Prohibited Use. Enterprise will not (a) use, occupy or permit the use or occupancy of the Easement or use the Port's other property for any purpose or in any manner which is or may be, directly or indirectly, (1) inconsistent with the requirements of this Agreement, (2) violative of any of the Legal Requirements, (3) dangerous to life, health, the environment or property, or a public or private nuisance or (4) disruptive to the activities of any other tenant or occupant of property adjacent to the Easement, (b) commit or permit to remain any waste to the Easement or (c) commit, or permit to be committed, any action or circumstance in or about the Easement which, directly or indirectly, would or might justify any insurance carrier in canceling the insurance policies maintained by Enterprise on the Easement and Improvements thereon. The Port hereby confirms to Enterprise that the use of the Easement for the Permitted Use shall not constitute a prohibited use hereunder so long as the same is conducted in compliance with applicable Legal Requirements.
- 4. Environmental Restrictions. Enterprise shall not cause or permit any Hazardous Materials or industrial solid wastes to be generated, treated, stored, manufactured, disposed or released on or about the Easement or transferred or transported on or across the Easement, in contravention of any legal requirements. Any use of Hazardous Materials by any person on the Easement shall be in strict conformance with all legal requirements and shall not cause the Easement to be subject to remedial obligations to protect health or the environment. The terms "Hazardous Materials" shall mean any flammables, explosives, radioactive materials, hazardous waste and hazardous constituents, toxic substances or related materials, including substances defined as "hazardous substances," "hazardous

materials," "toxic substances" or "solid wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Sec. 5101, et seq.; the Resources Conservation and Recovery Act, 42 U.S.C.A. Sec. 6901, et seq.; the Toxic Substance Control Act, as amended, 15 U.S.C.A. Sec. 2601 et seq.; Grantor's Tariffs; the Solid Waste Disposal Act, Chapter 361 of the Health and Safety Code of Texas; or any other legal requirement.

- 5. Notification of Potential Liability Triggering Event. Within two (2) business days following receipt thereof, Enterprise shall notify and provide the Port with all copies of written notices, demands, lawsuits, or other correspondence from any federal, state or local governmental agency or private party related to the Easement, including, but not limited to, the following:
 - a. The violation of any federal, state, or local statute or regulation;
 - The loss of any operating permit;
- c. Any enforcement action undertaken by any federal, state or local governmental agency, or any private party;
- d. The institution of any lawsuit by any governmental entity or any private
- party; or e. The service of a potentially responsible party demand letter from any private or governmental party.
- 6. Consequences of Enterprise's Violation of Environmental Legal Requirements. In the event Enterprise's violation of environmental Legal Requirements expose the Port to fines or penalties as the Grantor of the Easement, Enterprise shall provide the defense of the Port with respect to such fines and penalties under the appropriate regulatory, administrative, or judicial procedures, and will pay any such fines or penalties timely and promptly after completion of any such defensive or mitigative proceedings, including appeals, if any. In the event of Enterprise's unreasonably repeated conviction of the same violation of environmental Legal Requirements within any twelve month period, the Port may re-open negotiations regarding the Term and Easement Payments under this Agreement.
 - IT IS EXPRESSLY AGREED AND 7. INDEMNIFICATION. UNDERSTOOD THAT ENTERPRISE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE PORT, ITS EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, AND BOARD MEMBERS, FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, DEMANDS, DAMAGES (INCLUDING WITHOUT LIMITATION REASONABLE

LEGAL FEES, COSTS AND EXPENSES), ENFORCEMENT ACTIONS, OR PENALTIES, ARISING OUT OF THE PLACEMENT, TRANSPORTATION, USE, MANUFACTURE, HANDLING, CREATION, STORAGE, TREATMENT, DISCHARGE, OR RELEASE OF ANY HAZARDOUS MATERIALS TO, ON OR FROM THE EASEMENT DURING THE TERM OF THIS AGREEMENT BY ENTERPRISE, OR ENTERPRISE'S AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR INVITEES.

ARTICLE V

Easement Payments and Other Required Payments

- 1. Payments Payable On A Fiscal Year Basis. Both parties acknowledge that it is in the best interest of the Port to receive its annual Easement Payments to coincide with the Port's fiscal year, which is July 1st to June 30th. The annual Easement Payments for this Easement shall be computed based upon the prevailing Tariff Rates set by the Board of Commissioners of the Port. The beginning rate for the fiscal year 2010/2011, computed based upon a 20 inch, 4,144.42 rod natural gas pipeline, shall be \$22,064.89. As such, payment in the amount of \$22,064.89, for the fiscal year 2010/2011, shall be due and payable 30 days from the date of the execution of this Agreement. Thereafter, payment shall be due and payable on the 1st day of July of each year during the term of this Agreement. In the event the Board of Commissioners change the Tariff Rates of the Port by official Board action, such change in rate shall be communicated to Enterprise in writing, not less than sixty (60) days before the effective date of the change. If an increase in rate occurs, the annual Easement Payments shall be pro-rated for that fiscal year and an invoice reflecting such change shall be sent by the Port to Enterprise. Such invoice shall be due and payable on or before thirty (30) days after mailing of the invoice. In the event the change in Tariff causes a decrease in Easement Payment, the Port shall adjust the payment on an annual pro-rated basis and refund any excess in payment within thirty (30) days of the computation of the new Tariff. An administrative fee of \$1,750.00 shall also be due and payable at the time of execution of this Easement.
 - 2. <u>Place of Payment</u>. Easement Payments due hereunder shall be paid to the Port at its address for notice hereunder or to such other person or at such other address in Calhoun County, Texas, as the Port may from time to time designate in writing. Payments shall be paid in legal tender of the United States of America without notice, demand, abatement, deduction or offset except as herein provided.
 - 3. <u>Delinquent Payments</u>. All Easement Payments and other payments required of Enterprise hereunder which are not paid within thirty (30) days following receipt of written notice from the Port shall bear interest at the maximum rate allowed by law (or, if there is no maximum rate, at ten percent (10%) per annum) from the date due until the date

paid. In no event, however, shall the charges permitted under this Section or elsewhere in this Agreement, to the extent any or all of the same are considered to be interest under applicable law, exceed the maximum rate of interest allowable under applicable law.

- 4. Other Charges: Enterprise shall comply with and shall pay all local, state and federal taxes (including without limitation, income, franchise, gross receipts, sales, use, excise and real and personal property taxes), governmental charges of any kind whatsoever, payments in lieu of taxes, assessments, special assessments, licenses, registration fees, freight, and transportation charges and any other charges imposed, assessed, levied or liabilities incurred with respect to the ownership, the possession or the use of the easement (including any liability to the surface estate relating to such easement), or Enterprise's Pipeline, any payment of the Easement Payments or any other payments by Enterprise and any penalties, fines or interest imposed on any of the foregoing (collectively, the "Charges") during the Easement Term.
- 5. Enterprise to Control Charges. The Port shall, to the maximum extent permitted by law, permit Enterprise to pay directly to the relevant taxing or other authorities or third parties all Charges due under Article V, Paragraph 4 hereof, if Enterprise so requests.
- a. Enterprise may, at Enterprise's expense and in Enterprise's or the Port's name, in good faith contest any Charges (and the Port shall cooperate fully in any such contest) and, in the event of any such contest, may permit such Charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Port shall notify Enterprise that, in the reasonable opinion of the Port, by nonpayment of any such Charges the interest of the Port in the easement will be materially endangered or any part thereof will be subject to loss or forfeiture, in which event Enterprise shall promptly pay any such Charges.
- b. Enterprise agrees to conduct any such contest or appeal in a reasonable manner and further agrees that it will not enter into any settlement or compromise that would obligate the Port to make any payment or to take or refrain from taking any action, other than ministerial acts.
- c. All rebates, refunds or other return of Charges shall be paid directly to Enterprise, or if received by the Port, shall be promptly paid over to Enterprise.

ARTICLE VI

Operation, Use and Maintenance of Easement

1. <u>Maintenance and Repair</u>. Enterprise is solely obligated with respect to the costs of locating, installing, maintaining, operating, repairing and removing the Easement and

Enterprise's Pipeline. Specifically, Enterprise shall at all times, and at its own cost and expense, maintain, preserve and keep the Easement and Enterprise's Pipeline in good repair, condition and working order, and shall from time to time as necessary or prudent make all repairs, replacements and improvements necessary to keep and maintain the same in such condition, and shall at all times occupy, use and operate the same in compliance with the requirements of all applicable federal, state and local laws, rules and regulations, including those pertaining to the environment.

- 2. It is an express condition hereof that if at any time during the term hereof any pipeline or other installation of Enterprise made under authority of this Easement on the property of the Port shall interfere with the widening, deepening or other revision or improvement of the Matagorda Ship Channel, turning basin or other stream or body of water within the Port's territory tributary to the Matagorda Ship Channel and turning basin (so far up the Matagorda Ship Channel, turning basin or other stream as the District's jurisdiction extends) or shall interfere with the construction, maintenance, repair and use of improvements desired by the Port to be made on its premises or on premises acquired by the Port for widening, deepening or other revision of the Matagorda Ship Channel, turning basin or other stream or body of water, then and in such event Enterprise, at its cost and expense and without cost or expense to the Port shall remove, relocate, lengthen, deepen or otherwise conform Enterprise's installations to the requirements for such improvement.
- 3. <u>Emergencies</u>. If any emergency occurs in the maintenance and use of the Easement or Enterprise's Pipeline, Enterprise shall immediately give notice to the Port Director of the Port, any federal, state or local authorities and their regulatory agents, and comply with all directives from any relevant authorities to bring a safe and proper conclusion to the emergency.

4. Compliance with Laws.

a. Enterprise shall comply with all rules or orders which the Port deems necessary for the protection and conservation of its land and water, including all necessary rules and orders pertaining to navigable water traffic by the Port over and across the above described property. In this respect, it is understood by Enterprise that in the event said pipeline should interfere with the operation or development of navigable water traffic as determined by the applicable federal and state regulations in force at that time, then in that event Enterprise shall lower, remove or take whatever action may be necessary to prevent any interference with the operation or development of navigable water traffic over, across and on said waterways. Enterprise shall also use all reasonable care and all proper safeguards to comply with all applicable laws and regulations to prevent pollution. In the event of pollution, Enterprise shall promptly comply with all applicable laws and regulations, whether federal, state or local, regarding the cleanup of such pollution or with applicable cleanup standards required to minimize any unreasonable risk to human health and the environment,

whichever cleanup standard is higher. Further, Enterprise shall be responsible for all damages and costs to persons and to public and private property. Enterprise, in any of its operations of the Easement or Enterprise's Pipeline, shall not violate the provisions of any environmental legislation or the environmental rules, regulations or standards of any such regulatory body, whether federal, state or local.

b. Enterprise, its agents, servants, employees, contractors and sub-contractors shall comply with and not violate any safety or health statute or regulations, whether federal state or local, and, in particular, will comply with the Federal Mine Safety and Health Administration Act of 1977 and the Federal Occupational Safety and Health Act of 1970, and all amendments. Enterprise agrees that it will incorporate the relevant provisions of this Agreement into any contract or sub-contract for work it has done or will be done on the Easement, the Right of Way and Enterprise's Pipeline described herein so that such contractors or sub-contractors will be cognizant of the required compliance with the provisions hereof.

5. <u>Permits</u>. Enterprise shall obtain and maintain in effect at all times during the Term all permits, licenses and consents required or necessary for the installation,

maintenance, use and operation of Enterprise's pipeline.

ARTICLE VII

THE PORT'S RIGHT TO MONITOR

- 1. Reporting Requirements. Requirements of this paragraph apply to activities pertaining to this Easement only. Enterprise shall promptly supply the Port with copies of all notices, reports, correspondence, and submissions made by Enterprise, as they pertain to this Easement only, to the Environmental Protection Agency, the Texas Water Commission, the United States Occupational Safety and Health Administration, or any other local, state, or federal authority that requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to all applicable regulations. Enterprise shall also supply the Port with written confirmation of any notices or reports regarding releases of hazardous wastes or substances that Enterprise makes orally or by telephone to any such governmental agency. Enterprise shall promptly notify the Port in advance of any scheduled meeting between Enterprise and any of the agencies specified above.
- 2. <u>Notification of Product Change</u>. Enterprise represents that it will only be transporting NATURAL GAS through Enterprise's Pipeline. In the event Enterprise desires to change this product, it must have the written approval of the Port for the new product.
- 3. Environmental Liens. Enterprise shall promptly notify the Port as to any liens threatened or attached against the premises pursuant to any environmental law. In the

event that an environmental lien is filed against the premises, Enterprise shall, within 30 days from the date on which the lien is placed against the property, or before the date on which any governmental authority commences proceedings to sell the premises pursuant to a lien, either: (a) pay the claim and remove the lien from the premises; or (b) furnish either (i) a bond satisfactory to the Port in the amount of the claim on which the lien is based or (ii) other security satisfactory to the Port in an amount sufficient to discharge the claim on which the lien is based.

4. ENVIRONMENTAL CLAUSE. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT ENTERPRISE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE PORT, ITS EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, AND BOARD MEMBERS, FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, DEMANDS, DAMAGES, ENFORCEMENT ACTIONS, OR PENALTIES, WHETHER KNOWN OR UNKNOWN AS OF THE EFFECTIVE DATE, ARISING OUT OF:

(A) THE PRESENCE, TRANSPORTATION, USE, MANUFACTURE, HANDLING, CREATION, STORAGE, TREATMENT, DISCHARGE, OR RELEASE OF ANY HAZARDOUS SUBSTANCE, HAZARDOUS MATERIAL, TOXIC SUBSTANCE, OR SOLID WASTE AS SUCH TERMS ARE DEFINED IN CERCLA (42 U.S.C.A. 9601, ET SEQ.), THE SOLID WASTE DISPOSAL ACT, AS AMENDED BY THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C.A. 6901, ET SEQ.), AND THE TOXIC SUBSTANCES CONTROL ACT (15 U.S.C.A. 2601, ET SEQ.) (HEREINAFTER COLLECTIVELY REFERRED TO AS "HAZARDOUS SUBSTANCE"), TO, ON, IN OR FROM ENTERPRISE'S PIPELINE AS OF THE EFFECTIVE DATE OF THIS AGREEMENT;

(B) THE PLACEMENT, TRANSPORTATION, USE, MANUFACTURE, HANDLING, CREATION, STORAGE, TREATMENT, DISCHARGE, OR RELEASE OF ANY HAZARDOUS SUBSTANCE TO, ON OR FROM ENTERPRISE'S PIPELINE BY ENTERPRISE OR ANY THIRD PARTY AFTER THE EFFECTIVE DATE OF THIS AGREEMENT; AND

(C) ANY VIOLATION OF FEDERAL, STATE, OR LOCAL ENVIRONMENTAL LAW, ORDINANCE OR REGULATION RELATING TO ENTERPRISE'S PIPELINE BY ENTERPRISE OR ANY THIRD PARTY.

ARTICLE VIII

INSURANCE

- 1. <u>Insurance</u>. Enterprise shall procure and maintain continuously in effect with respect to the Easement, insurance against liability for injuries to or death of any persons or damage to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Easement or any part thereof, providing coverage with a combined single limit of Ten Million Dollars (\$10,000,000.00) for injuries to or death of persons or damage to property, or in such other amounts and with such other coverages as shall at the time be in accordance with general industry practice for similar facilities and operations of the type and scope of the Easement. All such policies of insurance shall designate the Port as an additional insured. Enterprise shall furnish to the Port a certificate evidencing coverage and designating the Port as an additional insured within thirty days of the date of execution hereof. In the event Enterprise changes policies, a copy of the new certificate designating the Port as an additional insured shall be furnished to the Port within ten (10) days.
- 2. <u>Self-Insurance</u>. Enterprise may at any time during the term of the Easement substitute self-insurance for any insurance coverage required by the terms of this Agreement, to be provided by Enterprise or any affiliate of Enterprise; provided, however, that Enterprise or the relevant affiliate can provide to the Port filings with the Securities and Exchange Commission or other audited financial statements demonstrating that Enterprise or the relevant affiliate had as of the end of its most recent fiscal year a consolidated net worth of at least Five Hundred Million Dollars (\$500,000,000).

ARTICLE IX

INDEMNITY

OF DAMAGE, ENTERPRISE HEREBY RELEASES AND DISCHARGES THE PORT, ITS SUCCESSORS AND ASSIGNS, AND ALL OF ITS RESPECTIVE OFFICERS, DIRECTORS, COMMISSIONERS, AND THEIR SUCCESSORS IN OFFICE, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES AND AGENTS, HEREINAFTER COLLECTIVELY AND SEVERALLY REFERRED TO AS "INDEMNITEES" FROM AND AGAINST ALL LIABILITY FOR, AND ASSUMES THE RISK OF ALL LOSSES, EXPENSES, LIENS, CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER FOR DAMAGE TO THE PROPERTY OF INDEMNITEE AND OF ENTERPRISE, AND FOR THE PERSONAL INJURY TO OR DEATH OF ANY PERSONS (INCLUDING BUT NOT LIMITED TO THE PORT, ITS OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES, ATTORNEYS, DESIGNEES,

REPRESENTATIVES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS OF THE PORT) AND/OR DAMAGE TO ANY PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY BELONGING TO THE PORT, ITS OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES, REPRESENTATIVES, TENANTS, DESIGNEES, ATTORNEYS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS) AND FOR ANY OTHER LIABILITY, DAMAGES, FINES OR PENALTIES (EXCEPT WHERE REIMBURSEMENT FOR FINES OR PENALTIES IS PROHIBITED BY APPLICABLE LAW), INCLUDING COSTS, EXPENSES, PENALTIES AND INTEREST, ATTORNEY FEES AND SETTLEMENTS HEREINAFTER REFERRED TO COLLECTIVELY AND SEVERALLY AS "CLAIMS", ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR FAILURE TO PERFORM THE COVENANTS OF THIS AGREEMENT, SUBJECT TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF THE INDEMNITEES. THIS INDEMNITY SHALL INCLUDE CLAIMS ARISING OUT OF, BROUGHT BY OR CAUSED, IN WHOLE OR IN PART BY ENTERPRISE, ITS OFFICERS, DIRECTORS, EMPLOYEES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS OF ENTERPRISE, AND ENTERPRISE EXPRESSLY AGREES TO DEFEND, INDEMNIFY, REIMBURSE AND HOLD THE PORT, ITS OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES, ATTORNEYS, DESIGNEES, REPRESENTATIVES, TENANTS, SUBCONTRACTORS, SUPPLIERS, INVITEES OR LICENSEES AND AGENTS, HARMLESS FROM ALL "CLAIMS" OF ANY KIND OR CHARACTER, INCLUDING BUT NOT LIMITED TO CLAIMS IN ANY MATTER RESULTING FROM, ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY ENTERPRISE'S, (INCLUDING ITS OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES, TENANTS, SUBCONTRACTORS, SUPPLIERS, OR LICENSEES AND AGENTS) WILFUL MISCONDUCT, INVITEES NEGLIGENCE, GROSS NEGLIGENCE, DELIBERATE ACTS, STRICT LIABILITY IN TORT OR BREACH OF WARRANTY, EXPRESSED OR IMPLIED.

THE FOREGOING INDEMNIFICATION SHALL NOT BE APPLICABLE TOWARD OR ENFORCEABLE IN FAVOR OF ANY INDIVIDUAL INDEMNITEE FOR A PARTICULAR CLAIM, INSOFAR AS THAT PARTICULAR CLAIM IS ADJUDICATED BY A COURT OF COMPETENT JURISDICTION, TO RESULT EXCLUSIVELY FROM THE GROSS NEGLIGENCE OR WILLFUL CONDUCT OF THAT INDEMNITEE SEEKING TO ENFORCE THE INDEMNIFICATION.

THE PORT AND ENTERPRISE ACKNOWLEDGE THAT THIS STATEMENT AND THE FOREGOING INDEMNIFICATION UNDER THIS ARTICLE IX COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS CONSPICUOUS AND HAS BEEN REVIEWED AND APPROVED BY EACH PARTIES OWN RESPECTIVE

INDEPENDENT LEGAL COUNSEL. THE INDEMNIFICATION ARISING HEREIN SHALL SURVIVE THE TERMINATION OF THIS LICENSE.

- 2. The Port's Exculpation. The Port shall have no responsibility or liability to Enterprise, or to Enterprise's officers, directors, shareholders, partners, employees, agents, contractors or invitees, for bodily injury, death, property damage, business interruption, loss of profits, loss of trade secrets or other direct or consequential damages occasioned by (a) Force Majeure, (b) vandalism, theft, burglary and other criminal acts (other than those committed by the Port and its employees), or (c) the condition, repair, replacement, maintenance, damage or destruction of the Easement. "Force Majeure" shall mean:
- a) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards and other adverse and inclement weather, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots or civil disturbances;
- (b) orders or judgments of any federal, state or local court, administrative agency or governmental body, if not the result of willful or negligent action of the party relying thereon; and
- (c) any other similar cause or event, provided that the foregoing is beyond the reasonable control of the party claiming Force Majeure.

ARTICLE X

REMOVAL OF ENTERPRISE'S PIPELINE

- 1. Upon the termination of this Agreement, however the same may be brought about, Enterprise shall cause the removal and the disposition of Enterprise's Pipeline. Enterprise shall give written notice to the Port of its decision to permanently abandon Enterprise's Pipeline. Enterprise shall be responsible to comply with all the law, regulations, procedures, actions and physical requirements of any federal, state or local authority or agency and Enterprise shall solely be responsible for all costs of such removal and disposition.
- 2. The Port reserves the right to have Enterprise's Pipeline removed at Enterprise's cost in the event Enterprise fails to remove the same within thirty (30) days after termination of this Agreement. Enterprise shall indemnify and hold harmless the Port from and against all costs of the removal of all improvements, including Enterprise's Pipeline, installed by Enterprise on the Easement.

3. To the extent permitted by law and notwithstanding any other terms hereof, the Port and Enterprise may agree in writing that Enterprise's Pipeline may be abandoned in place and not removed by Enterprise after the termination of this Agreement. It is understood and agreed by both parties to this contract that the Port is the approving authority as to the removal-nonremoval of property from the Easement, and the decision of the authority shall govern.

ARTICLE XI

ASSIGNMENT, SUBLEASE, MORTGAGE AND SALE; ENCUMBRANCES

- 1. Title to Easement. Legal title to the Easement shall be in the Port.
- 2. <u>Assignment by the Port</u>. The Port shall not assign its obligations under this Agreement, and no purported assignment thereof shall be effective; provided, however, that such prohibition shall not apply to any legislatively created successor of the Port or to any merger of the Port with any other political subdivision of the State of Texas.

3. Assignment, Sublease, Mortgage or Sale by Enterprise.

- a. Except as provided by Article XI, Paragraph 3b hereof, this Agreement may not be assigned, subleased, mortgaged or sold by Enterprise without the prior written consent of the Port.
- b. Enterprise may freely assign this Agreement, or sublease the Easement, to: (i) any successor in interest to Enterprise by statutory merger, (ii) any corporation, partnership, limited liability company or other legal entity, which is a direct or indirect subsidiary of, or which is otherwise ultimately controlled by, Enterprise; provided, however, any such assignment or sublease of this Agreement shall not relieve Enterprise from liability under this Agreement.
- 3. <u>Disclaimer of Warranties</u>. THE PORT, BY DELIVERY HEREOF, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE EASEMENT OR ANY PART THEREOF OR AS TO THE FITNESS FOR THE USE CONTEMPLATED BY ENTERPRISE OF THE EASEMENT OR ANY PART THEREOF.
- 4. <u>No Further Encumbrances</u>. Enterprise shall not, directly or indirectly, create, incur, assume or cause to exist any lien, charge, encumbrance or claim on or with respect to the Easement. In the event an encumbrance occurs, Enterprise shall promptly, at its own expense, take such action as may be necessary to discharge or remove any such lien, charge, encumbrance or claim if the same shall arise at any time. Enterprise shall reimburse

the Port for any expense incurred by it in order to discharge or remove any such lien, charge, encumbrance or claim.

ARTICLE XII

Events of Default; Remedies

- 1. Events of Default. An occurrence of any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):
- a. Enterprise fails to observe or perform any covenant, condition or agreement on its part to be observed or performed hereunder (including the payment of the Easement Payments), for a period of thirty (30) days after receipt of written notice from the Port specifying such failure; provided, however, that if such observance or performance requires work to be done, actions to be taken or conditions to be remedied, which by their nature cannot reasonably be accomplished within such thirty (30) day period, if Enterprise shall commence such observance or performance within such period and shall be proceeding diligently with respect thereto then the fact that the same shall not have been corrected during such period shall not constitute an Event of Default; or
- b. The discovery by the Port that any material statement, representation or warranty made by Enterprise in this Agreement is false, misleading or erroneous in any material respect.
- 2. <u>Remedies on Default</u>. Upon the occurrence of an Event of Default and following written notice of such default to Enterprise, the Port may, without further demand or notice, with or without terminating this Agreement, reenter and take possession of the Easement and exclude Enterprise therefrom; provided, however, that if this Agreement has not been terminated, the Port shall return possession of the Easement to Enterprise when the Event of Default is cured, and provided further that Enterprise shall continue to be responsible for the Easement Payment due; or
- 3. <u>Return of Easement</u>. In addition to the provisions of Article X, upon the termination of this Agreement pursuant to this Article XII, Enterprise shall deliver possession of the Easement to the Port.
- 4. <u>Delay</u>; <u>Notice</u>. No delay or omission in exercising any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient, and any one exercise thereof shall not be deemed exclusive of such exercise. To entitle any party to exercise any remedy reserved to it in this Agreement, it

shall not be necessary to give any notice other than as may be specifically required in this Agreement.

ARTICLE XIII

Miscellaneous

1. Notices. All notices, certificates and other documents hereunder to be given to or to be served upon any party entitled to notices hereunder shall be in writing and shall be delivered personally or by certified or registered mail, and if so mailed, shall be deemed to have been given and received within five (5) business days after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States Mail, and if given otherwise shall be deemed to have been given when delivered to the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other address as either party may hereafter designate in accordance with the provisions of this Article XIII, Paragraph 1 to the other party in writing:

If to the Port:

Calhoun Port Authority
P. O. Box 397
Point Comfort, Texas 77978
Attention: Port Director

If to Enterprise:

Enterprise GC, L.P. 2727 N Loop West, Room 613 Houston, Texas 77008-1044

- 2. <u>Severability</u>. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the other provisions hereof.
- 3. <u>Amendments, Changes and Modifications</u>. This Agreement may be amended from time to time by the Port and Enterprise by written agreement between the parties.
- 4. <u>Public Disclosure</u>. The Port is a governmental authority subject to the requirements of the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Texas Open Records Act, Chapter 552, Texas Government Code, as amended, and as such the Port is required to disclose to the public this Agreement and certain

other information and documents relating to the consummation of the transactions contemplated hereby upon written request. Additionally, it may be necessary to file all or portions of this Agreement with the Federal Maritime Commission and thereby render all or a portion of this Agreement to a public document. In this regard, Enterprise agrees that the rightful filing or disclosure of this Agreement or any other information or materials related to the consummation of the transactions contemplated hereby to the public by the Port to the extent required by the Shipping Act, the Texas Open Meetings Act, Texas Open Records Act, or any other Legal Requirement will not expose the Port (or any party acting by, through or under the Port) to any claim, liability or action by Enterprise. The Port shall, to the extent legally possible, treat any trade secrets or confidential information disclosed by Enterprise as confidential commercial information.

- 5. <u>Further Assurances and Corrective and Supplemental Instruments</u>. The Port and Enterprise shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting or supplementing any inadequate or incorrect description of the Right of Way or the Easement hereby obtained or intended to be or for carrying out the expressed intention of the Agreement.
- 6. <u>Applicable Law and Venue</u>. This Agreement shall be governed by, construed and shall be enforceable in accordance with the laws of the State of Texas without giving effect to the principles of conflict of laws. Venue for any action brought hereunder shall lie in the State Courts of Calhoun County, Texas.
- 7. <u>Heading</u>. The captions or headings in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of any provisions or Articles hereof.
- 8. <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument and all of which taken together shall constitute one and the same instrument.
- 9. Entire Agreement. This Agreement, together with the exhibits attached hereto, contain the final and entire agreement regarding the subject matter hereof between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.
- 10. No Personal Liability or Accountability. No covenant, condition or agreement contained in this Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future officer, commissioner, agent or employee of the Port or Enterprise, in his or her individual capacity, and neither the officers, agents or employees

- of the Port, Enterprise nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of any transaction or activity relating to this Agreement.
- 11. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Port shall be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof or a course of dealing, but any such right or power may be exercised from time to time and as often as may be deemed appropriate by the party exercising it
- 12. <u>No Additional Waiver Implied by One Waiver</u>. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder, and shall not be construed to be an implied term hereof or a course of dealing between the parties.
- 13. <u>Dispute Expenses and Attorneys' Fees</u>. If any controversy, claim, or dispute arises relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees, and costs; provided, however, that the parties hereto waive any and all rights, claims or causes of action arising under this Agreement for incidental, consequential, exemplary or punitive damages.

IN WITNESS WHEREOF, the Port has caused this Agreement to be executed by its duly authorized officers, and Enterprise has caused this Agreement to be executed in its corporate name by its duly authorized officer, as of the date written below.

EFFECTIVE the 1st day of July, 2010.

CALHOUN PORT AUTHORITY

Randy L. Boyd, Board Chair, Calhoun Port Authority

ATTEST:

H.C. Wehmeyer, Jr., Secretary,

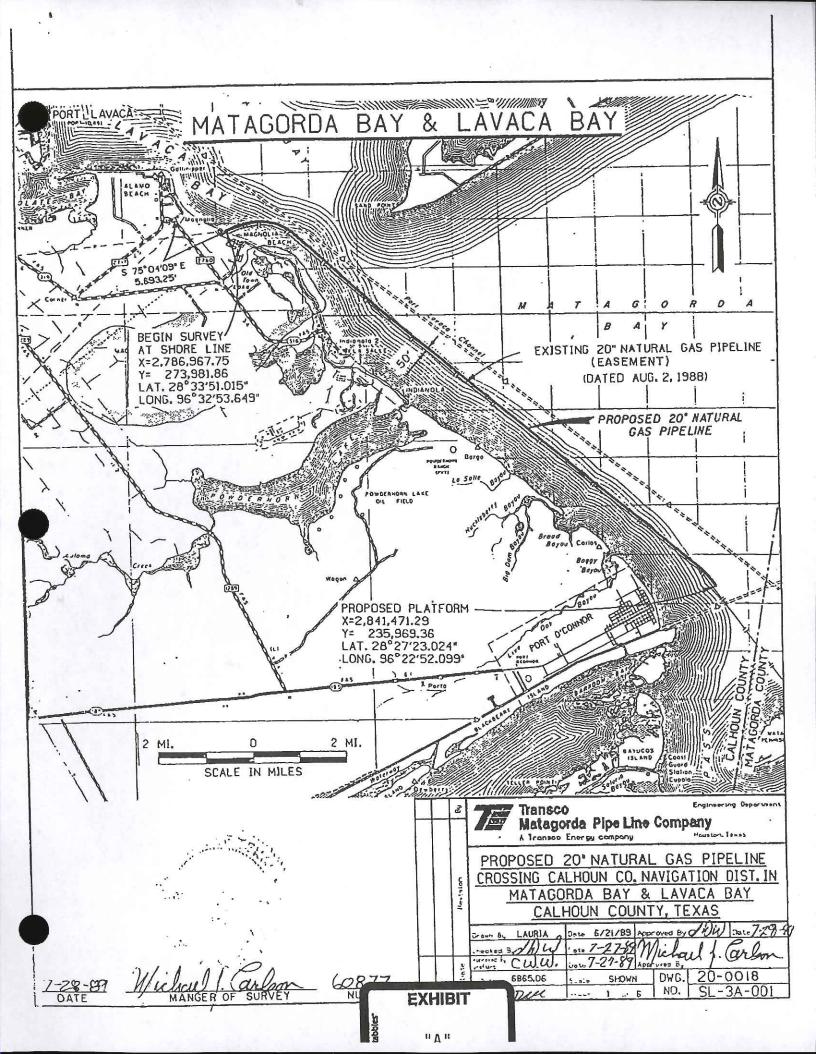
Calhoun Port Authority

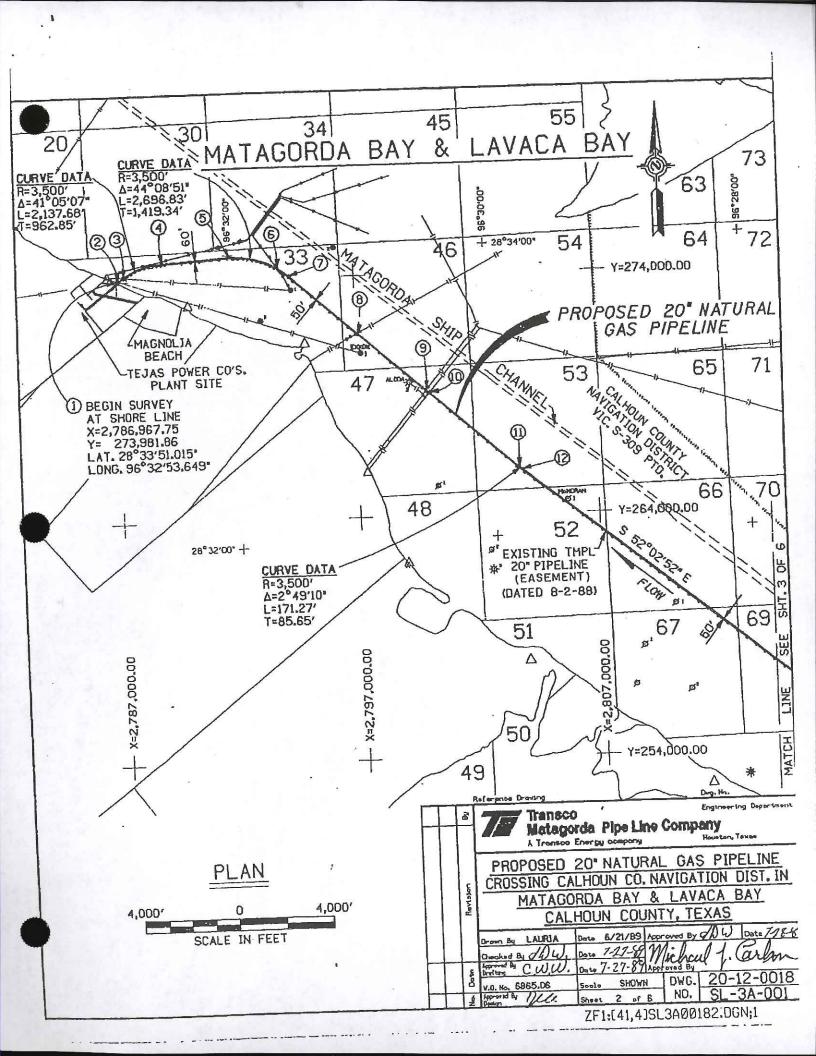
ENTERPRISE GC, L.P.

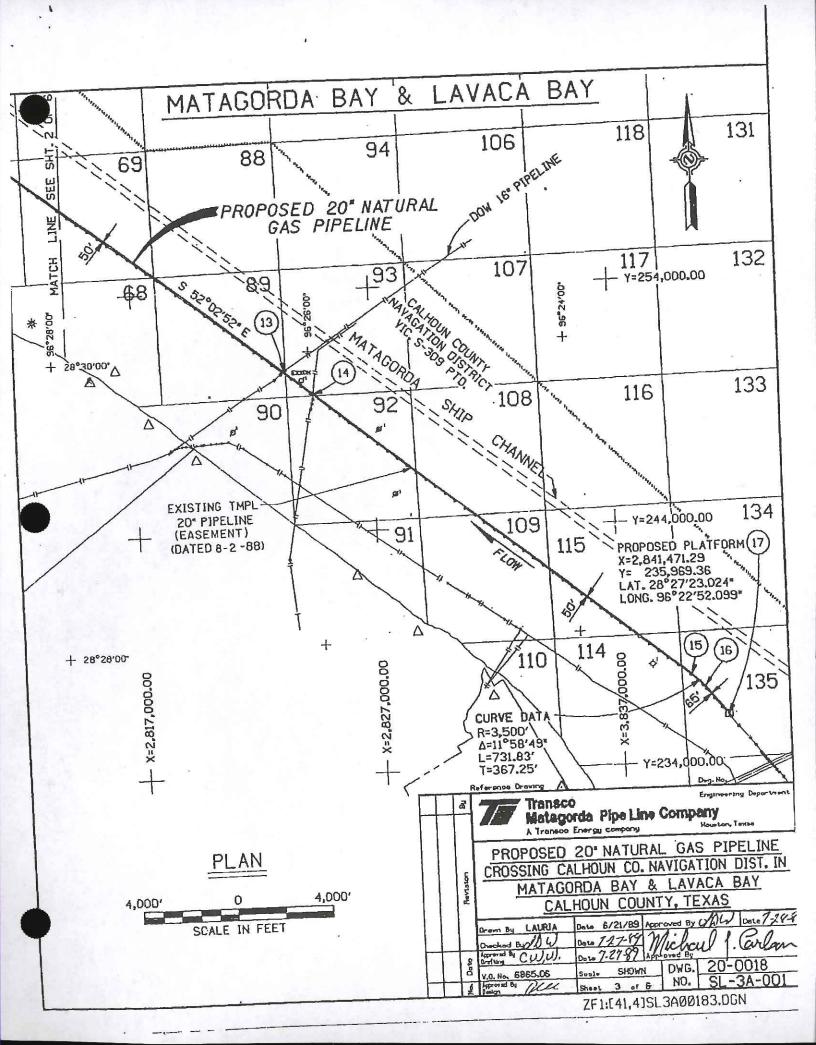
By: _____

Printed Name: Car/

Γitle: 🔏







PROPOSED 20" NATURAL GAS PIPELINE FROM MAGNOLIA BEACH TO PROPOSED PLATFORM, BLOCK 135-S MATAGORDA BAY & LAVACA BAY CALHOUN COUNTY, TEXAS

POINT	LENGTH	BEARING	X	· Y	REMARKS
1			2,786,967.75	273,981.86	POINT OF CURVATURE AT SHORELINE
1-2	129.52'	CURVE	2,787,070.76	274,060.36	CROSSING 2-4" EXXON PIPELINES
2-3	245.24	CURVE	2,787,273.45	274,198.33	CROSSING 2-4" EXXON PIPELINES
3-4	1,762.92'	CURVE	2,788,934.24	274,731.73	POINT OF TANGENCY
4-5	2,860.03'	N 86'37'26' E	2,791,789.31	274,900.16	POINT OF CURVATURE
5-6	2,086.38'	CURVE	2,793,786.44	274,413.27	CROSSING 2' & 4' EXXON PIPELINES
6-7	61 Ø,45'	CURVE	2,794,281.08	274,056.85	POINT OF TANGENCY
7-B	3,730.11	S 49°1 3′42° E	2,797,1 Ø5.96	271,620.92	CROSSING 6' TEXAS STAR PIPELINE
8-9	3,71 2.69'	S 49°13′42' E	2,799,917.65	269,196.37	CROSSING B' LAVACA PIPELINE
9-10	170.10'	S 49°13′42° E	2,800,046.47	269,085.28	CROSSING 8' LAVACA PIPELINE
10-11	4,855.37'	S 49"13'42' E	2,803,723.54	265,91 4.51	POINT OF CURVATURE
11-12	171.27'	CURVE	2,803,855.92	265,805.88	POINT OF TANGENCY
12-13	24,678.16'	S 52'02'52' E	2,823,315.28	250,628.76	CROSSING I B' DOW PIPELINE
13-14	1,533.42'	S 52'02'52' E	2,824,524.42	249,685.70	CROSSING 2.5' LAVACA PIPELINE
4-15	19,577.78	S 52°02′52° E	2,839,962.00	237,645.32	POINT OF CURVATURE
5-16	731.83′	CURVE	2,840,487.98	237,1 38.41	POINT OF TANGENCY
16-17	1,527.60'	S 40'04'04' E	2,841,471.29	235,969.36	PROPOSED PLTF., BLOCK 135-S

CALHOUN COUNTY NAVIGATION DISTRICT TOTAL LENGTH = 68,382.87 FT. OR 4,144.42 RODS

	1	Reference Drawing	Deg. No.				
	ď	Transco Hatagorda Pipe Line Company A Transco Energy openany Houston, Texas					
	Ravisson	MATAGUNDA BAT & LAYACA D					
		Orom By LAURIA Date 6/25/89 Appro Checked BU ALLY Date 7-27-55 W	ichaul Carlo				
П	Oote	31123	DWG. 20-0018				
	皇	Approved by Delle Shape 4 of 6	NO. SL-3A-001				

